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EXAMINER

FLORES, ROBERTO W

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DOUGLAS JAMES BECK, DANIEL P. TIMM, and
KRISTOPHER A. LARSEN

Appeal 2016-004552
Application 13/775,037
Technology Center 2600

Before BRADLEY W. BAUMEISTER, HUNG H. BUI, and
KEVIN C. TROCK, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejections of claims 1–18. App. Br. 4.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Rather than repeat the Examiner's positions and Appellants' arguments in their entirety, we refer to the following documents for their respective details: the Final Action mailed March 26, 2015 ("Final Act."); the Appeal Brief filed Sept. 28, 2015 ("App. Br."); the Examiner's Answer mailed January 21, 2016 ("Ans."); and the Reply Brief filed March 21, 2016 ("Reply Br.").

STATEMENT OF THE CASE

Appellants describe the present invention as follows:

A method for operating a data processing system having a touch enabled display screen that displays a plurality of waveforms to alter the display of one of the waveforms without altering the display of the remaining waveforms is disclosed. The method includes determining a selected waveform in response to a user touching the display screen in a first location thereby defining a touch area that determines the selected waveform. An operation that is to be performed on the selected waveform is then defined by a gesture on the screen. The selected waveform is determined by a touch area that is defined by the user touching the screen. If more than one waveform is defined by the touch area, the possible waveforms are sequentially selected until the correct one is presented to the user in response to the user repeating the touching that defines the touch area.

Abstract.

Independent claim 1, reproduced below, is illustrative of the appealed claims:

1. A method for operating a data processing system having a touch enabled display screen that displays a plurality of waveforms, said method comprising:

determining a selected waveform in response to a user touching said display screen in a first location thereby defining a touch area that determines said selected waveform; and

determining an operation to be performed on said selected waveform that is defined by a gesture on said screen, said operation leaving any remaining waveforms unaltered, said gesture being separate from said user touching said display screen at said first location.

EXAMINER'S REJECTIONS AND REFERENCES

(1) Claims 1–3, 5–7, 9–12, 14–16, and 18 stand rejected under 35 U.S.C. § 103(a) as obvious over Tallman (US 4,766,425; issued Aug. 23, 1988) in view of Rapp (US 2011/0074698 A1; published Mar. 31, 2011).

(2) Claims 4, 8, 13, and 17 stand rejected under 35 U.S.C. § 103(a) as obvious over Tallman in view of Rapp and Zay (US 2014/0015809 A1; published Jan. 16, 2014).

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

FINDINGS AND CONTENTIONS

The Examiner finds that Tallman discloses both claimed steps of selecting a waveform and determining the operation to be performed on the waveform using a touchscreen, as recited in claim 1. Final Act. 4–5 (citing Tallman, col. 8, ll. 38–44 (for teaching the selecting step), col. 10, ll. 50–54 (for teaching the operation-determining step)). In particular, the Examiner finds “Tallman teaches selecting waveform in response to a user touching said display screen (col. 3, ll. 59–62 and col. 8, ll. 26–44), and further teaches to an operation to be performed on selected waveform by a gesture leaving any remaining waveforms unaltered (col. 10, ll. 50–54).” Ans. 2–3.

The Examiner finds that Tallman does not teach that the operation-determining touchscreen gesture and the waveform-selection touch are separate. *Id.* at 5. The Examiner relies on Rapp for teaching this missing

feature, as well as for providing motivation for combining this feature into Tallman's oscilloscope. *Id.*

Appellants contend that "Tallman does not teach determining an operation to perform on the selected trace by performing a gesture on the touch-enabled display, the gesture being separate from the touching of the display to select the trace."² App. Br. 8. Appellants further contend that this limitation is not taught by Rapp either. *Id.*

ANALYSIS

The passages of Tallman cited by the Examiner do not teach performing an operation-selecting gesture on a touchscreen. All of the relied upon passages instead are directed to using a touchscreen only to *select* the desired waveform. The operations to be performed on the selected waveform appear to be undertaken with panel knobs or pushbuttons:

In order to change a display attribute of a particular waveform [displayed on a prior art digital oscilloscope], an operator first selects the waveform using the waveform selection knob or pushbuttons. Once the waveform is selected, *the oscilloscope reconfigures itself so that it responds to operation of any of the waveform attribute control knobs or buttons by changing display attributes of the selected waveform.*

Tallman, col. 1, ll. 28–35 (emphasis added).

Tallman further explains that the purpose of the invention is to reduce the complexity of the oscilloscope controls by allowing the user to use a

² Appellants more specifically argue that the Examiner admits that Tallman does not teach this limitation. We disagree that the Examiner admitted such a shortcoming in Tallman. As explained above, the Examiner clearly takes the position that Tallman does teach performing an operation-selecting gesture on the touchscreen.

touchscreen to select the waveforms. *See, e.g.*, Tallman, col. 2, ll. 29–32 (“What is needed is a system permitting an operator to provide input to a digital oscilloscope indicating an operator’s *selection of a waveform*, wherein the system is easy to understand and use”) (emphasis added). We see no disclosure within Tallman that the touchscreen additionally can be used to perform an operation on the selected waveform.

CONCLUSIONS

For the foregoing reasons, Appellants have persuaded us of error in the Examiner’s obviousness rejection of independent claim 1, as well as independent claims 5 and 10, which contain similar language. Accordingly, we decline to sustain the Examiner’s rejection of those claims or of claims 2, 3, 6, 7, 9, 11, 12, 14–16, and 18, which ultimately depend from claims 1, 5, and 10.

With likewise decline to sustain the Examiner’s remaining rejection of dependent claims 4, 8, 13, and 17. The Examiner does not take the position that Zay cures the deficiency of the obviousness rejection explained above. *See* Final Act. 10–11 (explaining that Zay is only being relied upon for teaching the additional features of the dependent claims).³

³ Because the obviousness rejections are premised on the finding that Tallman specifically uses a touchscreen to perform the operation-determine gesture, we only address that issue. We do not address the separate issue of whether the cited prior art further might have rendered it obvious to use Tallman’s touchscreen for performing an operation-determining gesture. *See Ex parte Frye*, 94 USPQ2d at 1075.

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DECISION

The Examiner's decision rejecting claims 1–18 is reversed.

REVERSED